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SUBJECT: DOMINICAN REPUBLIC: 2006 INVESTMENT DISPUTES AND
EXPROPRIATION CLAIMS UPDATE

REF: SECSTATE 60294

¶1. This cable provides the 2006 Investment Disputes and Expropriation Claims Report for the Dominican Republic. The tracked changes version was sent via email on June 9, 2006 as directed.

¶2. The United States Government is presently aware of seventeen (17) claims (including five new ones for 2005) by US persons/entities against the Government of the Dominican Republic (government). No new claims were reported in 2006. In mid-2005 a USAID-sponsored consultant finished working with the Dominican Government on implementing a system for evaluating and resolving claims through the use of bonds. In 1999, Law 104-99 was passed, offering to claimants whose disputes arose on or before August 16, 1996, the option of circumventing the traditional method of claim resolution (at the "Bienes Nacionales"), and instead to seek compensation from a specially appointed Commission, provided the claimants are willing to accept payment in bonds. A total of 247 claims were solved under Law 104-99 with USAID assistance. This law expired on November 9, 2005 and it is unlikely that any additional claims will be paid with bonds.

¶3. Action on resolution of claims slowed when the Fernandez administration took office in August 2004. The Office of Public Credit within the Ministry of Finance is responsible for expropriations and investment disputes. The current Director has maintained his position for a little over a year. The office has had four directors in two years. This high turnover rate with the change in administration has delayed consideration of claims. The Office of Public Credit states that several claimants have either never registered their claim formally with the Office of Public Credit or the claims have not been passed to the Office of Public Credit from other government offices. The Embassy raises these expropriation and investor dispute cases with the government on a regular basis, and all information provided herein was last updated in June 2006.

The Claims

¶1. Claimant A - 1999

Eight independent power producers (IPPs), six of which are US-owned, provide approximately 30 percent of the Dominican Republic's electricity. In 1999, the IPPs entered into a "Definitive Agreement" with the government under which an escrow account would be established in order to permit the capitalization of the State electricity company's (Corporacion Dominicana de Electricidad (CDE)) power generation and distribution facilities. This escrow account would receive payments from the new distribution companies that would be used to pay the IPPs for both current invoices and accumulated arrears. The government did not live up to its commitment to implement this escrow arrangement; CDE

failed to keep its payments current to the IPPs; and the government breached several agreements to make up the shortfall, which exceeded \$100 million.

In September 2002, the government announced that seven of the eight IPP,s had agreed in principle to give up their existing long-term contracts. To date, the government has successfully renegotiated only one new contract with these IPP's. In February 2004, the government and CDE signed a short-term agreement with two of the Claimants whereby the government agreed to increase tariff rates, make payments on current invoices and negotiate accumulated arrears. Although tariff rates were increased CDE and the government have continuously failed to make timely payments to Claimants A, resulting in cash flow problems and credit difficulties, and they are presently in default to Claimants A, and other generating companies in the sector, in excess of \$400 million. Of additional concern, the contracts with Claimants A are backed, in part, by guarantees. Should Claimants A's lenders call those guarantees, the government faces liability of more than \$425 million. The Embassy has made repeated approaches to high government officials in an effort to resolve this ongoing problem.

12. Claimant B - 1998

Claimant B purchased land located on the access road to Santo Domingo's Las Americas Airport. In 1998, the Public Works Department built the ramp for a highway overpass on Claimant B's land. Embassy contacted Public Works on behalf of Claimant B and was informed that Claimant B will be included in whatever settlement (i.e., cash payment or relocation) was to be offered to Dominican landowners affected by this construction. The government has yet to authorize funding to settle Claimant B's claim, and it fell too late to be

included in the original bond issuance program. A possible government initial settlement offer will likely be in the form of bonds. No time has been set for a decision.

13. Claimant C - 1994 and various

In 1996, Claimant C discovered that various components of the government had, over time, built facilities (including an airport runway extension) on a parcel of land near the town of Barahona that Claimant C's company had owned since the 1920s. The Embassy raised this case on numerous occasions with senior Dominican officials and facilitated meetings between Claimant C and the government. In 1999, Claimant C accepted an offer of settlement in partial payment of the claim of approximately \$1.5 million, which the government paid in three equal payments. Efforts by Claimant to recoup the remainder of its claim have been rebuffed by the government, which takes the position that the claim has been satisfied in full. The matter is presently in litigation.

14. Claimant D - 1991

In 1988, the government asked Claimant D to build 1,000 homes for sugar cane workers. Claimant D never signed a contract with the government. Materials were shipped to the Dominican Republic for the first phase of construction (30 homes) and Claimant D had invoices showing that the materials arrived. In 1989, Claimant D was informed that, due to heavy rains and a bad crop, construction of the homes would be delayed. Claimant D arranged with port authorities to have the materials remain in the port until construction could begin. In 1991, Claimant D discovered that all of the materials had disappeared. Claimant D alleged that some of the materials were auctioned off, and some given to government entities. Claimant D estimates losses at \$1.3 million. Claimant D's case was disqualified under Law No. 104-99. Claimant D has since initiated legal action in a Dominican court.

15. Claimant E - 1990

In 1989, Claimant E purchased a 75 percent interest in beachfront property near Barahona. Claimant E's Dominican

partners owned the remaining 25 percent. Claimant E's interest in the land had an estimated value of \$112,000. On September 18, 1989, the government seized the land, stating that it intended to use it for the construction of a power plant. Following this action, Claimant E entered into a new agreement with its Dominican partners, under which Claimant E would cease payments on the land and would reduce its interest in the property to 15 percent. It was agreed that legal actions would be undertaken jointly, the proceeds of which would be distributed between the co-owners in the same proportion as their interest in the property.⁸ Claimant E and its Dominican partners have sought compensation in Dominican courts, and reported to the Embassy in 1994 that the courts had ruled in their favor. No compensation was received so in January 2000, Claimant E applied for bonds under Law No. 104-99. The Embassy was advised in 2003 that the government was reevaluating the matter. No time has been set for a decision.

¶6. Claimant F - 1983

Claimant F is the owner of land with an assessed value of approximately \$1 million in the Puerto Plata area of the Dominican Republic. In 1983, the government seized the land, which is now part of the "Isabel de Torres Scientific Preserve." Claimant F sought compensation, but none was approved. According to Claimant F, the government previously valued the land at \$330,000. Claimant F reported that it has an assessment valuing the land at approximately \$990,000. Claimant F is willing to negotiate. The Embassy raised this matter in all discussions of investment disputes with the government. To date there has been no resolution, and the matter continues to experience payment opposition on behalf of Claimant F.

¶7. Claimant G - 1980's

The government expropriated Claimant G's property in the 1980's, which Claimant G valued at several million dollars. The Embassy continues to include the matter in all discussions of investment disputes with the government. To date there has been no resolution.

¶8. Claimant H - 1986

Pursuant to a presidential decree in 1986, the government expropriated 823,495.70 square meters of land belonging to Claimant N for use in the construction of the Maria Montez Airport in Barahona. Claimant H has sought compensation for the land, improvements to the land, crops located thereon, and for three million cubic meters of raw materials extracted

from the land. The claim was brought to the attention of the Embassy in May 2001, and has been included in all discussion of investment disputes with the government since that time. To date there has been no resolution. The matter continues to be considered for settlement.

¶9. Claimant I - 1998

Claimant I's land was expropriated in 1998 for highway expansion in Santo Domingo. The claim is for 15,342,840 pesos (approximately \$340,950), but as it arose after August 16, 1996, Claimant I was not eligible for the bond program under Law 104-99.

¶10. Claimant J - 1987

Claimant J's contract claim involves the unpaid commission for loan guarantees on a real estate transaction brokered in 1976. Claimant J asserts he is entitled to 2% of \$12 million, the loan guarantee amount. Claimant J has a default judgment from the US Court of Appeals for the Ninth Circuit, entered in 1987, for \$240,000. Claimant J asserts that with interest, the claim is now valued at approximately \$2 million. Embassy has raised this issue with government officials and facilitated a meeting between Claimant J and government officials, and the parties are presently in

discussion. The government provided the loan guarantees.

¶11. Claimant K - 2003

In 1998 Claimant K and family responded to advertisements by the Dominican Republic seeking US investment by purchasing two adjacent parcels of land located in Cumayasa, San Pedro de Macoris. In March of 2003 Claimant K, while visiting his property, discovered that almost 700 mature coconut trees had been bulldozed and other property destroyed by the Dominican Consejo Estatal de Azucar (CEA). When Claimant K contacted the CEA office in Santo Domingo to request an immediate evacuation of the area a CEA engineer recommended that Claimant L instead request that the properties be replaced with other unspecified parcels in unspecified areas, citing the CEA had incurred expenses in grading the land and uprooting the fruit trees. Claimant K immediately contacted a local attorney and initiated legal action in a Dominican Court. The Embassy contacted government officials in regard to this claim. The matter is currently pending a judicial decision.

¶12. Claimant L - 1992

In 1991 as an insurer to an international company with a contract to provide the sale of power station spare parts for the Dominican Corporacion Dominicana de Electricidad (CDE), Claimant L paid \$2,829,112.63 to the insured and accepted transfer of all rights to settlement in the dispute with the Dominican government. On May 12, 1992 an Italian court ruled in favor of Claimant L and ordered the payment of approximately \$5,369,781 (original sum plus accrued interest and expenses) by the CDE/government. In early 2003, government officials sought to retain a law firm in the US to negotiate a final settlement with Claimant L. The retainer was never completed. On May 27, 2004 the Ministry of Finance's Legal Department issued its opinion on the issue. The Embassy had been in repeated contact with government officials in regard to this claim and brought it to the specific attention of the Ministry of Finance at every available opportunity. Claimant L will continue to engage government officials through their local attorney. The estimated amount owed by the government is now approximately \$10 million. In February 2006 the government issued an offer of \$3,758,275 dollars. The Claimant has not responded to the government.

¶13. Claimant M - 1992

Claimant M owned 400 square meters of land bordering the road to the Santo Domingo Las Americas Airport. The land was expropriated by the government in the 1990,s for highway expansion. Claimant M's claim is being held up in the Ministry of Finance's Office of Engineering. In order for Claimant M to receive compensation, the Office of Engineering must evaluate the claim and then pass it to the Office of Public Credit for payment. The Office of Engineering has had the paperwork since April 2002. The Embassy contacted the Office of Engineering in June 2005, asking the staff to look into the matter and pass the paperwork on to the Office of Public Credit for payment. The claim is worth around 400,000 Dominican pesos or about \$14,000.

¶14. Claimant N - 2003

Claimant N is involved in a contractual dispute with the Dominican Procuraderia Nacional (Attorney General) concerning

a telephone system for Dominican prisons. Claimant N's company, in partnership with a California-based equipment maker, is having trouble activating the system in the prisons due to bureaucratic delay in the Dominican Procuraderia. His telephone equipment has already been installed in the central offices of the Procuraderia General and the Najayo, Puerto Plata and La Victoria prisons. In 2004, when representatives Claimant N went to activate the equipment at the central office, they were informed they could not operate the equipment until they had a letter of authorization from the

Procuraderia's office. Claimant N has invested over \$150,000 and is currently losing \$7,000 a month waiting for the Procuraderia to sign the appropriate letter. Claimant N signed a contract with the government on Sept 4, 2003. A new presidential administration began on August 16, 2004 and appears reluctant to honor the agreements of the previous administration. The Embassy has met with the Deputy Attorney General for Prisons and the Dominican telecommunications regulating agency of behalf of Claimant N.

¶15. Claimant O - 2005

On May 7, 2004, Claimant O and the company he represents signed a contract with the government granting Claimant O the right to exploit a government-owned salt mine in the area of Las Salinas, Province of Barahona, for a period of 25 years. Claimant O alleges the government is not honoring the contract and is denying his company access to the area. Claimant O has invested money in equipment and has made other investments including contractual payments and tax payments to the government. The contract requires Claimant O to invest \$1.5 million in the mine over the first five years of the contract and then \$150,000 every year thereafter. Claimant O has been unsuccessful in his attempts to obtain meetings with government officials. The government has sent this contract to a newly established government ethics commission for review. The Embassy has contacted the government's commission several times, as well as the General Director of Mining, to advocate on the behalf of Claimant O.

¶16. Claimant P - 2002

Claimant P entered a contract with Unidad Corporativa Minera (UCM, a government-owned entity closed in 2004) to determine the economic viability of sulphate based gold reserves at the Pueblo Viejo mine. UCM contracted Claimant P to conduct an environmental study, fish assessment, tailings dam sitings and an overall technical review. The job was finished in June 2002, but UCM failed to pay Claimant P more than \$125,0000. Embassy officials have been in contact with UCM and the Director General de Minería. Obtaining payment from the government has been difficult in part because the UCM no longer exists and changes at the Office of Public Credit has slowed processing.

¶17. Claimant Q - 2002

c. Claimant Q is currently involved in a legal dispute with the Anabalca Shipyard Company (50 percent owned by the Dominican Navy), the company he contracted to repair his tugboat. Anabalca is holding his tugboat as collateral for \$40,000 in repairs performed after the tugboat experienced transmission problems. Claimant Q claims Anabalca did not correct the transmission problem and he refuses to pay for the services Anabalca has provided. For the last year years the case has been before the Dominican Court of First Instance in Santo Domingo. Claimant Q's tugboat has been in the Port of Las Calderas, Province of Peravia, since June ¶2001. Embassy officials have raised this issue with the managers of the Anabalca Shipyard and the Dominican Armed Forces.

Claimant Names

The list of claimant names follows, all of whom are believed to be either U.S. citizens or companies with significant U.S. citizen investment. These claimants have signed no privacy act waivers.

Claimant A: Smith-Enron CLP, AES Dominican Power Partners, Coastal Corporation, Seaboard Corporation, Maxon Engineering Services Inc., and Cogentrix Corporation

Claimant B: Boyd Hernandez Collazo

Claimant C: Hunt Marckwald, Habanero Land Company

Claimant D: Betteroads Asphalt

Claimant E: Ronald Blisset, Blisset Enterprises

Claimant F: Luis M. Bordas and Neyda Lopez Bordas

Claimant G: Mercedes Colwin

Claimant H: Miguel Angel Fuentes Vasallo

Claimant I: Matia de los Angeles Barcelo Salas

Claimant J: Charles V. Meadows

Claimant K: Dante Llacuna

Claimant L: New Hampshire Insurance Company

Claimant M: Carlos Langa

Claimant N: Gabelle Prison Telephones- Ruben Cerezo

Claimant O: Pedro Antonio Martinez, Agregados del Lago,
S.A

Claimant P: Pincock, Allen & Holt, subsidiary of
HartCrowser

Claimant Q: Tugboat Linda W- Gene Martin
End Cable
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